

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

BRIDGETTE A. DOBBS,
Claimant Below, Petitioner

FILED
September 12, 2013
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 11-1708** (BOR Appeal No. 2046107)
(Claim No. 2010107582)

GLENN ENTERPRISES, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Bridgette A. Dobbs, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Glenn Enterprises, Inc., by Gary Nickerson and James Heslep, its attorneys, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 22, 2011, in which the Board affirmed a June 6, 2011, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's December 24, 2009, decision granting Ms. Dobbs a 0% permanent partial disability award for her right shoulder and elbow injury. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Dobbs was working for Glenn Enterprises when she injured her right shoulder on September 16, 2009. On December 11, 2009, Dr. Sethi evaluated Ms. Dobbs's right shoulder and elbow, and found that she has no permanent impairment resulting from the compensable injury. On December 24, 2009, the claims administrator granted Ms. Dobbs a 0% permanent partial disability award.

In its Order affirming the claims administrator's decision, the Office of Judges held that the preponderance of the evidence established that Ms. Dobbs suffered no permanent impairment to her right shoulder and elbow as the result of the September 16, 2009, occupational injury. On

appeal, Ms. Dobbs argues that Dr. Sethi's evaluation is unreliable because he fails to address the elbow involvement in the compensable injury.

The Office of Judges concluded that the record did not establish that Ms. Dobbs was entitled to more than a 0% permanent partial disability award. It noted that only one report in the record addresses permanent impairment resulting from the compensable injury. It further noted that Dr. Sethi evaluated both the right shoulder and right elbow in his evaluation, and he found that Ms. Dobbs had no permanent impairment. The Office of Judges also noted that the issue of an additional compensable component was not the issue before the adjudicator, and affirmed the claims administrator's decision. The Board of Review reached the same reasoned conclusions in its decision of November 22, 2011. We agree with the reasoning and conclusions of the Board of Review.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: September 12, 2013

CONCURRED IN BY:

Chief Justice Brent D. Benjamin

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Allen H. Loughry II